



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:	Issuance Date:
Public Notice No. 200200248-1	March 18, 2002
Application No.:	Expiration Date:
	March 18, 2007
Address comments to:	US Army Corps of Engineers, Huntington District 502 Eighth Street ATTN: CELRH-F Huntington, West Virginia 25701-2070

NATIONWIDE PERMITS FOR THE STATE OF OHIO

CORPS OF ENGINEERS REGULATORY PROGRAM ISSUANCE OF NATIONWIDE PERMITS WITH OHIO EPA 401 WATER QUALITY CERTIFICATION

On January 15, 2002, the Corps of Engineers published, in the Federal Register, the final rule for the administration of its nationwide permit program regulations under the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act. The rule became effective on March 18, 2002.

An integral part of the Corps' regulatory program is the concept of nationwide permits (NWP) for minor activities. NWPs are activity specific and are designed to relieve some of the administrative burdens associated with permit processing for both the applicant and the Federal government. The NWPs, published in the January 15, 2002, Federal Register, Issuance of Nationwide Permits (67 FR 2020), are issued by the Chief of Engineers, and are intended to apply throughout the entire United States and its territories. The districts in Ohio imposed regional conditions. For convenience, all NWPs with the appropriate regional, general and special conditions are attached.

The NWPs permits are not valid until the appropriate state agency certifies the discharge does not violate state water quality standards. In response to the January 15, 2002, Federal Register Notice (67 FR 2020), the State of Ohio Environmental Protection Agency (OEPA) denied 401 water quality certification for NWP 17 – Hydropower Projects.

OEPA granted water quality certification and imposed general conditions on NWPs 1, 2, 6, 8, 9, 10, 11, 15, 17, 20, 22, 25, 28, 29, 30, 34, 35, 37, 38, and 39, and specific conditions on NWPs 3, 4, 5, 7, 12, 13, 14, 16, 18, 19, 21, 23, 27, 31, 32, 33, 36, 40, 41, 42, and 43. Discharges that are NOT included in OEPA's certification of the NWPs must obtain either individual water quality certification or a waiver from:

Director
Ohio Environmental Protection Agency
Division of Surface Water
PO Box 1049
Columbus, Ohio 43216-1049
614-644-2001

Some nationwide permits require advance notification. The notification should be made in writing as early as possible prior to commencing the proposed activity. The notification procedures are located under General Condition 13. The notification to the Corps can be made concurrently with the request for individual state certification, if required.

The Corps has adopted changes that allow for the District Engineer to assert discretionary authority to modify, suspend, or revoke nationwide permits for individual activities. The District Engineer may require an individual permit for any activity determined to have more than minimal adverse environmental effects, individually or cumulatively, or would be contrary to the public interest. The basis for asserting discretionary authority has been broadened to include all public interest factors.

For activities involving Section 10 of the Rivers and Harbors Act of 1899, the permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

The nationwide permits provide a simplified, expeditious means of project authorization under the various authorities of the Corps of Engineers. We encourage prospective permit applicants to consider the advantages of nationwide permit authorization during the preliminary design of their projects. Assistance and further information regarding all aspects of the Corps of Engineers regulatory program may be obtained by contacting:

BUFFALO DISTRICT

Name: Paul G. Leuchner, Chief Regulatory Branch
Address: U.S. Army Corps of Engineers, Buffalo District
1776 Niagara Street
Buffalo, New York 14207-3199
Phone: 716-879-4330

HUNTINGTON DISTRICT

Name: Ginger Mullins, Chief, Regulatory Branch
Address: U.S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070
Phone: 304-529-5487

LOUISVILLE DISTRICT

Name: James Townsend, Chief Regulatory Branch
Address: U.S. Army Corps of Engineers, Louisville District
Post Office Box 59
Louisville, Kentucky 40201-0059
Phone: 502-582-6461

PITTSBURGH DISTRICT

Name: Al Rogalla, Chief Regulatory Branch
Address: U.S. Army Corps of Engineers, Pittsburgh District
William S. Moorhead Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4186
Phone: 412-395-7155

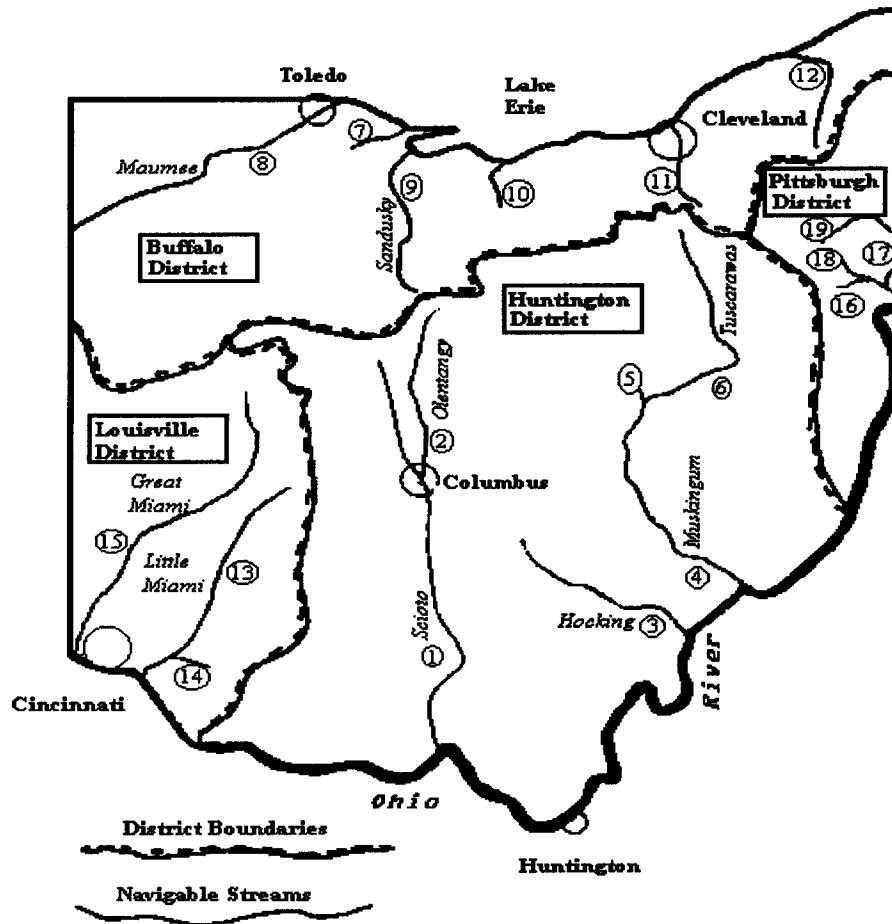
Attached is a map showing the district boundaries for the State of Ohio.



Ginger Mullins, Chief
Regulatory Branch

(O)

Corps Districts and Navigable Streams in the State of Ohio



Navigable Limits of Major Section 10 Streams in Ohio (Due to the scale of this map, all Section 10 Streams are not shown. Contact the proper District office for information.)

Huntington District

Scioto River.....175.0 miles
 Olentangy River.....74.3 miles
 Hocking River.....79.0 miles
 Muskingum River.....112.5 miles
 Walhonding River.....8.8 miles
 Tuscarawas River.....113.3 miles

Louisville District

Little Miami River.....90.7 miles
 E. Fk. Little Miami River.....6.4 miles
 Great Miami River.....117.0 miles

Buffalo District

Portage River.....12.0 miles
 Maumee River.....To Ind. St. Line
 Sandusky River.....96.0 miles
 Huron River.....10.0 miles
 Cuyahoga River.....41.1 miles
 Grand River.....91.6 miles

Pittsburgh District

Little Beaver Creek.....15.7 miles
 Middle Fk. L. B. Creek...17.3 miles
 North Fk. L. B. Creek....14.3 miles
 Mahoning River.....41.0 miles

A. INDEX OF NATIONWIDE PERMITS, CONDTIONS, ADDITIONAL INFORMATION, AND DEFINITIONS

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Maintenance
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Stream and Wetland Restoration Activities
28. Modifications of Existing Marinas
29. Single-family Housing
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

Nationwide Permit General Conditions

- | | |
|---|---|
| 1. Navigation | 14. Compliance Certification |
| 2. Proper Maintenance | 15. Use of Multiple Nationwide Permits. |
| 3. Soil Erosion and Sediment Controls | 16. Water Supply Intakes |
| 4. Aquatic Life Movements | 17. Shellfish Beds |
| 5. Equipment | 18. Suitable Material |
| 6. Regional and Case-by-Case Conditions | 19. Mitigation |
| 7. Wild and Scenic Rivers | 20. Spawning Areas |
| 8. Tribal Rights | 21. Management of Water Flows |
| 9. Water Quality | 22. Adverse Effects from Impoundments |
| 10. Coastal Zone Management | 23. Waterfowl Breeding Areas |
| 11. Endangered Species | 24. Removal of Temporary Fills |
| 12. Historic Properties | 25. Designated Critical Resource Waters |
| 13. Notification | 26. Fills Within 100-year Floodplains |
| | 27. Construction Period |

Additional Information

Definitions

Best Management Practices (BMPs)	Permanent Above-grade Fill
Compensatory Mitigation	Preservation
Creation	Restoration
Enhancement	Riffle and Pool Complex
Ephemeral Stream	Single and Complete Project
Farm Tract	Stormwater Management
Flood Fringe	Stormwater Management Facilities
Floodway	Stream Bed
Independent Utility	Stream Channelization
Intermittent Stream	Tidal Wetland
Loss of Waters of the US	Vegetated Buffer
Non-tidal Wetland	Vegetated Shallows
Open Water	Waterbody
Perennial Stream	

Regional Conditions

Specific regional conditions are listed below each NWP. Regional General conditions are listed under part F, titled "Regional General Conditions."

B. NATIONWIDE PERMITS AND CONDITIONS

1. *Aids to Navigation.* The placement of aids to navigation and Regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (USCG) (See 33 CFR, chapter I, subchapter C part 66).
(Section 10)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to navigable water of the US has been previously authorized (see 33 CFR 322.5(g)).
(Section 10)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

3. *Maintenance.* Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the

District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the US. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the US associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12-months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes.

This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

Nationwide 3 Specific Regional Conditions

- i. (Maintenance) Notification required prior to the use of vertical sheet piling and closed structures in the special habitat waters of Lake Erie (See General Conditions, Critical Resource waters (1)).

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations for NWP 3:

- 1) Total surface water and vegetation impacts on either side of the replacement structure shall be limited to the greater of 25 feet beyond the structure, or 25 feet beyond the toe of the slope of the structure's approach embankment. [Where the use of a crane is necessary to conduct a maintenance activity, total impacts shall not exceed 50 feet on either side of the structure or approach embankment]. In either case, total impacts, including the structure, shall not exceed 200 feet [except for stabilization projects]. Width shall be measured at the structure's narrowest point as it crosses the waterbody, and be measured parallel to stream flow.
- 2) Culvert replacement:
 - a. This Certification shall only authorize minor deviations from the existing structure's centerline and minor deviations in culvert dimensions, unless these deviations are necessary to follow current safety standards.
- 3) Bridge Replacement:
 - a. This Certification shall only authorize minor deviations from the existing structure's centerline, unless these deviations are necessary to follow current safety standards.
 - b. Bridge replacements shall not result in additional lanes unless necessary to follow current safety standards.
- 4) Maintenance or repair of existing fills (stabilization projects):
 - a. Impacts from maintenance or repair of existing fills shall not exceed the dimensions of the fill prior to the damage; and
 - b. This nationwide shall not authorize the replacement of existing open structures, such as piers, with closed structures that are open to the flow of water with structures that are not open to the flow of water.
- 5) For replacement vertical bulkheads, the following conditions apply:
 - a. For ship channels and harbors adjacent to federal navigation channels within the following harbors: Sandusky Harbor, Huron Harbor, Vermilion Harbor, Lorain Harbor, Conneaut Harbor, Port Clinton Harbor, Rocky River Harbor, Cleveland Harbor, Fairport Harbor, Ashtabula Harbor, and Toledo Harbor, 1,000 feet of existing vertical bulkheads may be replaced if recessed areas for aquatic habitat, or other aquatic habitat improvements, are incorporated within the design and construction of the replacement vertical bulkhead;
 - b. For all other areas, except Lake Erie, Lake Erie Islands, or Sandusky Bay, up to 1,000 feet of existing vertical bulkheads may be replaced. Toe stone shall be placed at the base of these new replacement vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent;
 - c. Replacement vertical bulkheads are not to be placed more than one foot waterward of the intersection of the ordinary high water level of the waterbody and the existing shoreline;
 - d. Minor dredging necessary for the installation of the replacement vertical bulkhead is authorized;
 - e. Placement of fill between the replacement vertical bulkhead and existing shoreline is authorized; and
 - f. Toe stone shall be placed at the base of these new replacement vertical bulkheads except in areas where the original shoreline is composed of bedrock and slopes are predominately greater than 75 percent or where the placement

of toe stone would interfere with shipping activity. When required, toe stone shall be placed at an average rate of one-third the total height of the replacement vertical bulkhead at a 2:1 slope.

- 6) Removal of accumulated sediment:
- a. Removal of accumulated sediment shall occur only once per year, except in cases of emergency situations which threaten life or property.
 - b. Removal of accumulated sediments shall be limited to low-flow conditions whenever practicable, except in cases of emergency situations which threaten life or property.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the US for the culture or holding of motile species such as lobster or the use of covered oyster trays or clam racks. **(Sections 10 and 404)**

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Condition and Limitation for NWP 4:

This Nationwide Permit shall not authorize weirs and flumes.

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition.
(Sections 10 and 404)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Condition and Limitation for NWP 5:

This Nationwide Permit shall not authorize weirs and flumes.

6. Survey Activities. Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill

placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the CWA.
(Sections 10 and 404)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

7. *Outfall Structures and Maintenance.* Activities related to:

(i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the CWA), and

(ii) Maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the US.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (e.g., vegetated shallows) in the vicinity of the proposed work.

(Sections 10 and 404)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations for NWP 7:

This Certification shall only authorize outfall structures which have been authorized by a Permit-to-Install (PTI) and/or National Pollutant Discharge Elimination System (NPDES) permit issued by Ohio EPA pursuant to Ohio Revised Code Chapter 6111, and Ohio Administrative Code Chapters 3745-31 and -33 and outfall structures from stormwater ponds that do not require an NPDES permit.

8. *Oil and Gas Structures.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the DOI, Minerals Management Service (MMS). Such structures shall

not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334: nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

(Section 10)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose.

(Section 10)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys.

(Section 10)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually.

(Section 10)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

12. *Utility Line Activities.* Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the US as follows:

(i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the US, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or

wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the US, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the US through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1/2-acre of non-tidal waters of the US.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the discharges do not cause the loss of greater than 1/2-acre of non-tidal waters of the US. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the US must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the US, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the US includes the filled area plus waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraph (i) through (iv) may not exceed a total of 1/2-acre loss of waters of the US. Waters of the US temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the US. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations,

foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the US that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the US even if there is no associated discharge of dredged or fill material (See 33 CFR part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

- (a) Mechanized land clearing in a forested wetland for the utility line right-of-way;
- (b) A Section 10 permit is required;
- (c) The utility line in waters of the US, excluding overhead lines, exceeds 500 feet;
- (d) The utility line is placed within a jurisdictional area (i.e., water of the US), and it runs parallel to a stream bed that is within that jurisdictional area;
- (e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10-acre of waters of the US;
- (f) Permanent access roads constructed above grade in waters of the US for a distance of more than 500 feet; or
- (g) Permanent access roads constructed in waters of the US with impervious materials.

(Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the US, which are considered to be bridges, not utility lines, and may require a permit from the USCG pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the US (i.e., Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Nationwide 12 Specific Regional Conditions

- i. Notification for aerial transmission lines over Section 10 waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation. See note below.
- ii. (Utility line substations) Notification is required for all work in waters of the U.S., including special aquatic sites.
- iii. (Foundations for overhead utility line towers, poles, and anchors) Notification is required for all stream work (perennial, intermittent, and ephemeral).
- iv. (Access roads) Notification is required for impacts greater than 1/10 acre in waters of the U.S., including wetlands.

Note: Nationwide permit 12(i) for Utility Activities - All aerial crossings will have the following minimum additional clearances above existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges:

<u>NOMINAL SYSTEM VOLTAGE, KV</u>	<u>ADDITIONAL CLEARANCE, FEET</u>
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 – 765	45

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations for NWP 12:

- 1) The length of any buried utility line within any single waterbody shall not exceed twice the width of that waterbody at the location of the crossing.
- 2) This Certification shall not authorize the installation of buried utility lines in more than five hundred (500) total linear feet (cumulative for the entire project) of forested wetlands (woody vegetation 6 meters tall or taller).
- 3) Buried utility line stream crossings shall not exceed a total of three (3) per stream mile per stream.
- 4) The total width of any mechanized land clearing or grading for buried utility lines shall not exceed twenty five (25) feet on either side of a utility line, or for a total width of fifty (50) feet on both sides of a utility line.
- 5) All hydric topsoil removed from a trench shall be separated and saved for later placement as the topmost backfill layer when the trench is refilled.
- 6) This Certification shall not authorize the stockpiling of side cast dredged material in excess of 3 months.
- 7) Applicants who intend to use chemicals regulated by the Ohio Department of Agriculture in any waters of the State (including wetlands) shall comply with all Ohio Department of Agriculture requirements regarding the use and application of the chemicals.
- 8) New buried utility lines crossing more than 1,500 feet (cumulative for the entire project) of surface waters (including isolated and non-isolated wetlands, and

ephemeral, intermittent, and perennial streams (measured bank-to-bank) and with impacts located in three or more than two Ohio EPA 8-digit hydrologic units as defined in Ohio Administrative Code 3745-1-54(F) are not certified.

13. Bank Stabilization. Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

- a. No material is placed in excess of the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;
- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US. (Sections 10 and 404)

Nationwide 13 Specific Regional Conditions

- Notification is required for the use of vertical bulkheads.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions for NWP 13:

- 1) The following conditions apply to new vertical bulkheads:
 - a. Up to 1,000 feet of new vertical bulkhead may be placed on shorelines on Lake Erie, Lake Erie Islands, and Sandusky Bay that are composed of bedrock with slopes predominately greater than 75 percent. No toe stone shall be placed at the base of these new vertical bulkheads.
 - b. Up to 50 feet of new vertical bulkhead for boat docking purposes may be placed anywhere on Lake Erie, Lake Erie Islands, and Sandusky Bay. Toe stone shall be placed at the base of these new vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent.
 - c. For areas not located on Lake Erie, Lake Erie Islands, or Sandusky Bay, up to 200 feet of new vertical bulkheads may be placed in areas with less than 35 percent of the existing shoreline in the immediate area already with vertical bulkheads. The 35 percent threshold is exceeded when more than 700 of the

- 2,000 feet of adjacent shoreline (1,000 feet measured from both sides of the proposed vertical bulkhead) is already in vertical bulkhead. Toe stone shall be placed at the base of these new vertical bulkheads except in areas where the shoreline is composed of bedrock and slopes are predominately greater than 75 percent.
- d. Vertical bulkheads may not be placed more than one foot waterward of the intersection of the ordinary high water level of the waterbody and the existing shoreline;
 - e. Minor dredging necessary for the installation of the vertical bulkhead is authorized;
 - f. Placement of fill between the vertical bulkhead and existing shoreline is authorized; and
 - g. Toe stone, when required, is installed at an average rate of one-third the total height of the vertical bulkhead at a 2:1 slope.
- 2) The following conditions apply to bank stabilization projects not involving vertical bulkheads:
- a. This Nationwide Permit shall only authorize the use of rock, stone, vegetative erosion control measures, broken concrete (without exposed reinforcing bar) and clean soil.
 - b. Bank stabilization projects on Lake Erie shall be in known Coastal Erosion Areas established by the Ohio Department of Natural Resources.
- 3) The following conditions apply to all bank stabilization projects:
- a. No material shall be placed in such a manner so as to restrict surface water flow into or out of any tributary.
 - b. Any fill used for bank stabilization shall be limited to that amount necessary to provide erosion protection.
 - c. This Nationwide Permit shall not authorize bank stabilization projects over 1,000 feet in length.

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:

- a. This NWP is subject to the following acreage limits:
 - (1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the US; or
 - (2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3-acre of waters of the US.
- b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:
 - (1) The discharge causes the loss of greater than 1/10-acre of waters of the US; or
 - (2) There is a discharge in a special aquatic site, including wetlands;
- c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in

minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit.

(Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

Nationwide 14 Specific Regional Conditions

- Notification is required for activities in Section 10 waters.
- Notification is required for all perennial and intermittent stream impacts greater than 200 feet and all ephemeral stream impacts greater than 300 feet.

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations for NWP 14:

- 1) Total surface water and vegetation impacts on either side of the structure shall be limited to the greater of 25 feet beyond the structure, or 25 feet beyond the toe of the slope of the structure's approach embankment. [Where the use of a crane is necessary to construct a linear transportation project, total width of the impacts shall not exceed 50 feet on either side of the structure or approach embankment]. In either case, total impacts, including the structure, shall not exceed 200 feet. Width shall be measured at the structure's narrowest point as it crosses the water body, and be measured parallel to stream flow.
- 2) Stream crossings shall not exceed a total of three (3) per stream mile per stream.
- 3) Culverts [except for ephemeral streams]
 - a. At least the lower 10% of all culvert bottoms shall be buried below the existing stream grade. Hydraulic design shall be based upon the remaining open portion of the culvert.

- b. Additional flood plain culverts shall be installed where the flood prone area is greater than twice the width of the stream at Ordinary High Water Mark (OHWM).

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the US, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the USCG as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit.
(Section 404)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

16. Return Water From Upland Contained Disposal Areas. Return water from upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the US. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures.
(Section 404)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Conditions and Limitations for NWP 16:
This Nationwide Permit shall be limited to the authorization of the disposal of dredged materials dredged from state-owned properties, where there are no known areas of contaminated sediments, provided best management practices are used to minimize adverse impacts to water quality.

17. Hydropower Projects. Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 kW; and the permittee notifies the District Engineer in accordance with the "Notification" General Condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition.
(Section 404)

Ohio State Certification for this nationwide permit has been denied.

- 18. Minor Discharges.** Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:
- a. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
 - b. The discharge, including any excavated area, will not cause the loss of more than 1/10-acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;
 - c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and
 - d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion.

(Sections 10 and 404)

The Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions for NWP 18:

- 1) If used to authorize utility line backfills and bedding, this Nationwide Permit shall authorize side casting or stockpiling of dredged or fill material for a maximum of 3 months.
- 2) Dredged material shall be placed directly at an upland site in such a way that sediment runoff to any surface water is controlled and minimized.
- 3) This Nationwide Permit shall not authorize disposal of fill material into Lake Erie, where that is the primary project purpose.

19. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the US (i.e., Section 10 waters) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the US (see 33 CFR 322.5(g)).

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions for NWP 19:

- 1) This Nationwide Permit shall not authorize dredging in stream riffles as defined in 40 CFR 230.45.
- 2) This Nationwide Permit shall not authorize dredging in surface waters that contain contaminated sediments. The applicant shall contact Ohio EPA for a determination whether a particular surface water contains contaminated sediments.

20. Oil Spill Cleanup. Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

21. Surface Coal Mining Activities. Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the DOI, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. In addition, to be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e))

Mitigation: In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404.

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions for NWP 21:

Water quality certification is provided for stream and wetland impacts to the following thresholds for surface coal mining, including mining within previously mined areas, conducted under a permit issued by the Ohio Department of Natural Resources, Division

of Mineral Resources Management (DMRM) that incorporates the standards of the federal Surface Mining Control and Reclamation Act, and including activities conducted under contracts to reclaim forfeited coal mining operations or abandoned mine land areas. This certification would allow a maximum extent of 3,000 linear feet of total impacts to intermittent and perennial streams, and impacts to certain wetland acreages as qualified below:

- 1) For natural stream reaches, the aggregate total of impacts to intermittent and/or perennial streams authorized under Nationwide Permit (NWP) 21 shall not exceed 1,500 linear feet with no more than 500 linear feet of impacts permitted to undesignated perennial streams.
- 2) No impacts to streams designated as Warmwater Habitat or having an equivalent or higher designation, as set forth in OAC rule 3745-1-07 through 32, are permitted under NWP 21. Projects that impact streams designated Warmwater Habitat or with an equivalent or higher designation require individual 401 water quality certification.
- 3) Impacts to an additional 1,500 linear feet of streams impacted by previous mining may be authorized by this certification.
- 4) Total perennial, intermittent and ephemeral stream length and Qualitative Habitat Evaluation Index (or equivalent) data in a form prescribed by Ohio EPA and including a copy of the mining permit map showing the ephemeral, intermittent, and perennial sections of each stream shall be provided to Ohio EPA both prior to any impacts and five years following stream reconstruction.
- 5) Impacts to any waterways with a slope greater than 2% authorized under NWP 21 shall be reclaimed and/or reconstructed using natural stream channel design standards identified in the ODNR/DMRM-Ohio EPA Joint Stream Reconstruction Guidelines, when appropriate. The reclamation of streams with less than 2% slope will be completed using natural channel design techniques.
- 6) A maximum of 3 acres of total wetland impacts would be allowable under this NWP 21, with:
 - a. No more than 3 acres of impacts to Category 1 wetlands permitted.
 - b. No more than ½ acre of impacts to Category 2 wetlands permitted.
 - c. No impacts to Category 3 wetlands permitted.
 - d. Wetland mitigation shall be provided in accordance with Ohio EPA's wetland water quality standards (OAC rule 3745-1-50 through 54).

22. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" General Condition. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the US may need a permit from EPA (see 40 CFR 229.3).
(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP.

(Sections 10 and 404)

Nationwide 23 Specific Regional Conditions

- Notification is required for use of this Nationwide permit.
- Notification should also include a copy of the CE determination; delineation of special aquatic sites, and a mitigation plan for impacts greater than 1/10 acre of waters of the United States.

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitation and Condition for NWP 23:

This Nationwide Permit shall only authorize activities described in 23 CFR Part 771.117 of the Federal Highway regulations.

24. *State Administered Section 404 Program.* Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. Those activities that do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a) (2)).

(Section 10)

Not Applicable.

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and

other such structures. The structure itself may require a Section 10 permit if located in navigable waters of the US.

(Section 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

26. [Reserved]

27. *Stream and Wetland Restoration Activities.* Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) Notification: For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date.

(Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

Nationwide 27 Specific Regional Condition

- Notification is required for all work in waters of the U.S., including special aquatic sites.

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Condition and Limitation for NWP 27:

This Certification does not authorize impacts to more than ½ acre of Category 2 forested wetlands unless Ohio EPA is a signatory to a Mitigation Banking Review Team (MBRT) instrument which addresses the impact.

28. Modifications of Existing Marinas. Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the US is authorized by this NWP.
(Section 10)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

29. Single-family Housing. Discharges of dredged or fill material into non-tidal waters of the US, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an Individual Permittee provided that the activity meets all of the following criteria:

- a. The discharge does not cause the loss of more than 1/4-acre of non-tidal waters of the US, including non-tidal wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition;
- c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;
- d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the US of 1/4-acre for the entire subdivision;
- e. An individual may use this NWP only for a single-family home for a personal residence;
- f. This NWP may be used only once per parcel;
- g. This NWP may not be used in conjunction with NWP 14 or NWP 18, for any parcel; and,
- h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the US includes the filled area previously permitted, the proposed filled area, and any other waters of the US that

are adversely affected by flooding, excavation, or drainage as a result of the project. This NWP authorizes activities only by individuals; for this purpose, the term “individual” refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as “the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership.”

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: The repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or disking to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies.

(Section 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

31. *Maintenance of Existing Flood Control Facilities.* Discharge of dredge or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that

- (i) were previously authorized by the Corps by Individual Permit, General Permit, by 33 CFR 330.3, or did not require a permit at the time it was constructed, or
- (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Activities including the discharges of dredged or fill materials, associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline, are authorized under this NWP. The NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these have been included in the maintenance baseline. All dredged material must be placed in an upland site or an

authorized disposal site in waters of the US, and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chains awing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)).

Notification: After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer in accordance with the “Notification” General Condition. The notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the District Engineer. The District Engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the design capacities of the flood control facility. The documentation will also include BMPs to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP can not be used until the District Engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This permit does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The District Engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the District Engineer will not delay needed maintenance, provided the District Engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination

made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the District Engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or BMPs as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Condition and Limitation for NWP 31:

This Nationwide Permit shall only authorize projects constructed by the Corps of Engineers and maintained by the Corps or transferred by the Corps to a local sponsor.

32. Completed Enforcement Actions. Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the CWA, provided that:

- a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;
- b. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and
- c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the U.S. under Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act (CWA), Section 107 of the Comprehensive Environmental Response,

Compensation and Liability Act (CERCLA or Superfund), Section 312 of the National Marine Sanctuaries Act (NMSA), Section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. '19jj, to the extent that a Corps permit is required.

For either (i), (ii) or (iii) above, compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6 (d)(2) and (e).

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions for NWP 32:

- 1) This Nationwide Permit shall not authorize any project with greater than 3 acres of wetland impacts, or impacts over 500 linear feet in any stream unless Ohio EPA has been informed in writing of each specific project that exceeds these criteria, and based on this information, has chosen not to issue a State Administrative Order, or Consent Order resulting from a State enforcement action.
- 2) The Corps of Engineers shall provide notification to Ohio EPA prior to any settlement agreement being finalized. The Corps shall provide such notification with a copy of the draft settlement document for Ohio EPA's review and comment. Ohio EPA will provide notice to the Corps that it intends to provide substantive site-specific comments within 5 days of the receipt of the draft settlement document. Ohio EPA will provide these comments to the Corps within 16 days of the receipt of the draft document. The Corps shall fully consider Ohio EPA's comments prior to finalizing the settlement document, and provide Ohio EPA with a copy of the final settlement agreement

33. Temporary Construction, Access and Dewatering. Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources.

Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to

dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322). The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable.).
(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Limitations and Conditions for NWP 33:

- 1) Temporary shall be defined as less than one year in duration;
- 2) This Nationwide Permit does not authorize construction, or maintenance, or modification of marina basins;
- 3) This Nationwide Permit does not authorize activities in special aquatic sites as defined in 40 CFR 230.3(q-1);
- 4) This Nationwide Permit shall not authorize temporary construction access and dewatering associated with mining activities.

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the U.S., including wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,
- c. The activity does not result in a net loss of wetland acreage.

This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

(Section 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

35. Maintenance Dredging of Existing Basins. Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths

for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used.

(Section 10)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

36. Boat Ramps. Activities required for the construction of boat ramps provided:

- a. The discharge into waters of the U.S. does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);
- b. The boat ramp does not exceed 20 feet in width;
- c. The base material is crushed stone, gravel or other suitable material;
- d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,
- e. No material is placed in special aquatic sites, including wetlands.

Dredging to provide access to the boat ramp may be authorized by another NWP, Regional General Permit, or Individual Permit pursuant to Section 10 if located in navigable waters of the United States.

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

Ohio State Certification Special Condition and Limitation for NWP 36: This Nationwide Permit shall not authorize boat ramps where dredging is required to establish water depths necessary for boat launching.

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

- a. The NRCS which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or
- b. The USFS under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or
- c. The DOI for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)).

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are

performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the CWA or Section 10 of the Rivers and Harbors Act.

(Sections 10 and 404)

Ohio State Certification General Limitations and Conditions apply to this nationwide permit.

39. Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

- a. The discharge does not cause the loss of greater than 1/2-acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:
 - (1) The discharge causes the loss of greater than 1/10-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or
 - (2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or
 - (3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District

Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

- d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;
- e. The discharge is part of a single and complete project;
- f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;
- g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 1/10-acre requires that the permittee notify the District Engineer in accordance with General Condition 13;
- h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);
- i. For discharges causing the loss of 1/10-acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., 1/12-acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., 1/12-acre of emergent wetlands created on-site);
- j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the US to increase